

CORRECTIONS IMPACT STATEMENT

SESSION: 17RS BILL #: SB 120 Introduced BR #: 106 DOC ID#: BR010600.100 - 106 - XXXX

BILL SPONSOR(S): Sen. W. Westerfield AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to crimes and punishments and making an appropriation therefor.

SUMMARY OF LEGISLATION: Amend KRS 17.510 to provide that juveniles adjudicated in other states are not required to register in Kentucky and make the provision retroactive; amend KRS 453.190 to define a "poor person" as one who has an income at or below 100% on the Supreme Court's sliding scale of indigency; amend KRS 534.060 to provide that no person shall be imprisoned for nonpayment of fines or court costs unless the failure to pay was willful and not due to an inability to pay; amend KRS 534.070 to raise the daily credit against a fine or court costs for time served to \$75 per day or \$150 per day if the defendant works at a community service or community labor program; provide that a jailer shall release the defendant, unless the defendant is incarcerated on other orders, once he or she has sufficient credit to satisfy the fine or court costs; amend KRS 23A.205 and 24A.175 to provide that if a defendant is a poor person and that he or she is unable to pay court costs in the foreseeable future, the defendant shall not be ordered to pay court costs or placed in jail for failing to pay court costs; amend various statutes to conform; amend KRS 439.250 and 439.345 to provide supervised compliance credits for some individuals on probation, parole, and post-release supervision; amend KRS 439.3108 to increase the time the Department of Corrections or the Parole Board can place a supervised individual who violates the conditions of community supervision in a detention facility; amend KRS 439.3401 to prohibit those convicted of manslaughter in the 2nd degree, reckless homicide, fetal homicide in the 3rd degree, and fetal homicide in the 4th degree from being paroled until he or she serves at least 50% of the sentence imposed; prohibit those convicted of a violation of manslaughter in the second degree or reckless homicide, when the victim was a peace officer or firefighter killed in the line of duty, from being paroled until he or she serves at least 85% of the sentence imposed; amend KRS 439.3406 to prohibit an inmate from being placed on mandatory reentry supervision if the inmate has not served at least 6 months since he or she was recommitted for a violation or has twice been released on mandatory reentry supervision; create new sections of KRS Chapter 439 to require the Department of Corrections to implement a reentry drug supervision pilot program for certain inmates and parolees with substance use disorders; create a new section of KRS Chapter 15 to allow law enforcement organizations to create Angel Initiative Programs; amend KRS 202A.121 to allow appointed counsel access to records; create a new section of KRS Chapter 197 to allow the Department of Corrections to administer a Prison Industry Enhancement Certification Program (PIECP); create a new section of KRS Chapter 196 to require the Kentucky State Corrections Commission to oversee a PIECP; amend various sections in KRS Chapter 335B relating to employment and licensure of persons convicted of crimes to narrow the class of offenses to which the chapter applies, to add consideration of the passage of time since the commission of the offense to the criteria considered in making licensure decisions, to delete language relating to a hiring or licensing authority's subjective view of an ex-offender's rehabilitation, and to require an open hearing prior to a license denial for an ex-offender; repeal, reenact, and amend KRS 335B.060 to exempt peace officers and other law enforcement personnel; repeal KRS 335B.040; amend various statutes to conform; amend KRS 532.100 to allow Class C and D felons eligible for placement in a local jail to participate in an approved community work program or other form of work release with the approval of the Department of Corrections; create a new section of KRS Chapter 533 to allow jails to operate a day reporting program; create new sections of KRS Chapter 441 to operate a reentry center with the approval of the Department of Corrections; amend various statutes to conform; amend KRS 15.280 to provide that the Criminal Justice Statistical Analysis Center is not the record custodian of the data sent to the center; amend KRS 15A.075 to reconstitute the Criminal Justice Counsel; create new sections of KRS Chapter 197 to specify how cost savings shall be calculated and create the criminal justice reinvestment fund to collect and appropriate those savings.

This ☒ bill ☐ amendment ☐ committee substitute is expected to:

☒ Have the following Corrections impact ☐ Have no Corrections impact

- | | |
|---|--|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration | <input checked="" type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input checked="" type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$66.82. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.41 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: ☐ NONE ☐ MINIMAL ☐ MODERATE ☒ SIGNIFICANT

Potential Impact:

Earned Compliance Credit:

This legislation creates earned compliance credit, providing an incentive for probation and parole offenders to maintain compliance with supervision. After one year on supervision, offenders on supervision for a Class D felony will receive 30 days of earned compliance credit for every month they are compliant with supervision. Offenders on supervision for a Class C felony will receive 30 days of earned compliance credit for every month they are compliant with supervision after two years on supervision.

Currently, under the criteria set out in the legislation including the required timeframes within their supervision, 1,595 parole offenders would be eligible for earned compliance credit. On average, earned compliance credit could reduce time on supervision by 592 days. At a cost to supervise of \$3.72 per day, the cost avoidance to the state is estimated at \$3,512,572.80.

In addition, probation offenders, a population who has not received this type of credit previously, would be eligible for earned compliance credit under the legislation. Of eligible probation offenders who completed supervision in 2016, if SB 120 had been in effect during the time they would have been eligible for supervision credit, 6,978 probation offenders would have been eligible for an average of 525 days of credit during the course of their probationary period. At a cost to supervise of \$3.72 per day, the cost avoidance to the state is estimated at \$13,628,034.

Note: These calculations assume offenders would be on supervision for the full supervision term and does not take into account other early release mechanisms.

Discretionary Detention:

Discretionary Detention as a graduated sanction is expanded under the legislation. Discretionary detention for probationers is extended from 30 to 60 days annually, and expanded from 10 days to 30 days for parolees, with a 60 day annual cap. In addition, for safety, offenders can be held in custody while awaiting entrance into a residential substance abuse treatment facility.

For example in 2016, 2,884 offenders served over 3,527 days in custody on discretionary detention. Under the legislation, the amount of days spent in custody for discretionary detention would be expanded. While there is a cost for days in custody, the cost savings in lieu of revocation is significant.

Not all offenders who receive discretionary detention will avoid revocation, but for some violations, discretionary detention may occur as an alternative sanction in lieu of revocation. For some offenders who are ultimately revoked, the revocation may occur at a later date due to the use of the graduated sanctions while the offender is on supervision. For example, of 122 offenders who were revoked, if rather than revocation they were instead subject to 30 days discretionary detention, the Department would have avoided, on average, 236 days in custody. At \$31.41 per day, this cost avoidance estimates at \$904,356.72.

Note: This calculation assumes that the offenders would have been revoked at the time of the initial violation if discretionary detention was not used. This is not always the case as discretionary detention may also be used as a sanction for minor violations which may not merit return to the releasing authority.

Violent Offender Statute:

Reckless Homicide, Manslaughter 2nd degree, and Fetal Homicide 3rd and 4th degree are added to the violent offender statute and shall be subject to serve 50% of their sentence prior to parole eligibility.

Currently, the 4 offenders incarcerated on Fetal Homicide will serve 538.3 days, on average, to 20% parole eligibility. Using the current incarceration numbers as an estimate, under the new legislation, offenders convicted of Fetal Homicide 3rd and 4th degree would serve, on average, 1345.6 days before eligible for parole at 50%. The increase from 20% to 50% is a difference of 807.4 days at \$66.82/day for an additional \$53,948.80 per offender.

The legislation moves Manslaughter 2nd Degree and Reckless Homicide where the victim is a peace officer or firefighter was acting in the line of duty from 50% parole eligibility to 85% parole eligibility.

AOC data reports 80 convictions for Reckless Homicide and 6 convictions for Complicity to Reckless Homicide in CY 2016. Currently, there are 42 offenders currently incarcerated for Reckless Homicide, however the Department cannot determine if the victim fits the criteria outlined by statute. These offenders currently serve an average of 449.02 days to 20% parole eligibility.

Future offenders impacted by this legislation would serve, on average, 1122.6 days to reach 50% parole eligibility or 2009.2 days to reach 85% parole eligibility.

The increase from 20% to 50% is a difference of 673.5 days at \$66.82/day for an additional \$45,005.60 per offender. And the increase from 50% to 85% is a difference of 827.3 days at \$66.82/day for an additional \$57,793.37 per offender.

In CY2016, AOC data reports 69 convictions for Manslaughter 2nd degree and 2 convictions for Complicity to Manslaughter 2nd degree. Currently there are 258 offenders currently incarcerated for Manslaughter 2nd degree, however the Department cannot determine if the victim fits the criteria outlined by statute. These offenders currently serve an average of 730 days to 20% parole eligibility. Future offenders impacted by this legislation would serve, on average, 1825 days to 50% parole eligibility or 3102 days to reach 85% parole eligibility.

The increase from 20% to 50% is a difference of 1095 days at \$66.82/day for an additional \$73,167.90 per offender. And the increase from 50% to 85% is a difference of 1277 days at \$66.82/day for an additional \$85,329.14 per offender.

Note: These calculations reference parole eligibility only. Release to parole is subject to the discretion of the Parole Board and offenders may not be paroled upon initial parole eligibility.

Mandatory Re-Entry Supervision:

The statute adds a provision that if an offender violates supervision and is revoked, they are not eligible for mandatory re-entry supervision until they have served at least six months. This provision prohibits offenders who have violated their supervision from being immediately eligible for mandatory re-entry supervision. The penalty included in the legislation may deter offenders from violating their supervision if they know they will have to serve a minimum of six months before being eligible for release to mandatory re-entry supervision.

In 2016, 928 offenders were returned to custody due to violations and then released again on mandatory re-entry supervision within 180 days. Nine-hundred twenty-eight offenders in custody for 180 days at \$31.41/day is a cost of \$5,246,726.40. The penalty of six months before eligibility on MRS will retain a certain number of offenders in custody for a minimum of 180 days, however, other offenders remain in custody beyond six months due to parole eligibility or parole deferment. These inmates would remain in custody past 180 days even without the violator penalty.

The statute also prohibits offenders from being eligible for mandatory re-entry supervision if they have been on MRS twice before.

Re-Entry Drug Supervision:

The legislation creates a reentry drug supervision pilot program providing for intensive parole supervision for program participants. The program provides for an accelerated release to parole, providing cost savings in days less incarcerated. However, there will be an impact to the Division of Probation & Parole in increased supervision services.

Currently the Department has 6,781 Class C offenders and 8,951 Class D offenders. Under the proposed legislation, 7,416 offenders would meet the eligibility criteria. These offenders have a current average length of stay of five hundred five (505) days. For a reentry drug supervision pilot program of an estimated two hundred (200) offenders, assuming the offender would serve sixty (60) days prior to entrance into the program, this would create a cost savings of \$2,795,490 in days less incarcerated (based on a cost of \$31.41 per day for inmate).

The pilot program will increase the number of offenders on parole supervision as well as provide intensive supervision services for program participants. For an estimated pilot program of two hundred (200) offenders, the Department would require at least two (2) additional Probation & Parole Officers and an additional Social Service Clinician. The cost of each additional officer is \$49,175 and the cost of a clinician is \$56,844.

In addition to increased resources by the Division of Probation & Parole, the reentry drug supervision pilot program will require time and resources from members of the reentry drug supervision team, including the Department of Public Advocacy, the Social Service Clinician assigned to the program, and the Administrative Law Judge leading the team.

Additional costs to the Department will include increased treatment through the contracted drug treatment provider. Intensive outpatient treatment costs are estimated at \$3,136 per offender and \$627,200 for two hundred (200) pilot participants. Additional costs include increased drug testing, estimated at a minimum of \$110,000 for two hundred (200) pilot participants.

Day Reporting Program:

The proposed legislation allows for day reporting programs to be operated by a county jail and for use as an alternative sentence by the Court. Felony offenders eligible for placement in a county jail would also be eligible for a day reporting program, creating an opportunity for cost savings for the Department of Corrections associated with housing inmates. The state would likely incur a program cost proportionate to the services provided to felony state inmates similar to other housing/program placements at \$31.61 per day.

Prison Industry Enhancement Certification Program:

This legislation creates an opportunity for expanded correctional industries. Upon establishment, the Department would be able to apply for the federal Prison Industry Enhancement Certification Program. Approval under this program would allow Kentucky Correctional Industries to lease with private employers to use prison labor, allowing private contracted businesses to bring their industry inside the prison walls and use prison labor. The employer would pay the inmates a prevailing wage, which is a cost savings to the private business. In turn, the program provides job training for incarcerated offenders. Offenders in the program will be required to use a percentage of their wages to pay restitution and child support, while contributing to a savings account in preparation for their release from incarceration. There is minimal cost to the Department as the leased employer will incur the operating and equipment costs.

Currently, the Department contracts with four private companies who provide materials used in prison industry operations, providing jobs for 166 inmates and revenue of 1.5 million annually. Under this legislation, correctional industries could expand through additional inmate job and revenue opportunities.

Re-Entry Centers:

Re-Entry Centers may be operated by jails to provide re-entry services to offenders. Eligible offenders shall have less than 12 months to complete their sentence, be eligible for placement at a class D jail facility, be a low risk Class B felon, or a county inmate. Offenders can be placed in the Re-Entry Center by the Department, the Jail, the Court, or the Parole Board. The Department will need to promulgate regulations as to the operations and oversight of Re-Entry Centers. The legislation also tasks the Department with collecting and analyzing data related to the effectiveness of the Re-Entry Centers in reducing recidivism and the engagement of participants in employment and the community.

Re-Entry Centers will provide offenders with needed services to help them be more successful in their transition to the community, resulting in better outcomes for offender recidivism. Re-Entry Centers can provide a cost savings if utilized as a response to violations of supervision in lieu of revocation. Additionally, this is a possible destination for offenders who do not have a home placement. For example, on average 50-70 offenders per month who qualify for release to home incarceration do not have a home placement in the community. Placement at the Re-Entry Center would allow the offender to receive programming while working in the community under GPS electronic monitoring. If the Department is required to pay a per diem for placement of an offender at a Re-Entry Center, there would be a cost to the Department similar to other housing/program placements at \$31.61 per day.

Reporting Requirements:

Section 136 of the legislation requires the Department to provide annual cost savings credited to this legislation. Section 137 creates a Criminal Justice Reinvestment Fund, which provides for expanded substance abuse treatment, contributions to the crime victim's compensation fund, and vocational training for inmates.

The Department would require additional functionality in the offender management system to support a data tracking mechanism for the Re-Entry Drug Supervision Pilot Program, Re-Entry Centers, and Prison Industries Enhancement established in this legislation.

It is estimated the enhancements to the offender management system would be an estimated \$75,000-\$100,000.

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: ☐ NONE ☐ MINIMAL ☐ MODERATE ☒ SIGNIFICANT

Potential Impact:

Re-Entry Drug Supervision:

This legislation does not make any changes to pre-conviction offenders. However, Class D and Class C offenders currently housed in county jails would be eligible to be released to the reentry drug supervision pilot program, creating a cost savings for the state while impacting the county jails as offenders diverted to this pilot program would represent a loss of per diem. Participants would be released directly to parole under this proposed legislation, providing a significant reduction in days less incarcerated for offenders housed in county jails. The number of participants in the pilot program would affect the impact to local jails. Based on an estimated initial pilot program of two hundred (200) offenders, the impact to jails would not be expected to be significant.

Day Reporting Program:

The impact on local facilities is unclear at this time. The operation of a day reporting center would affect jailers through program costs, program space, and staffing. Additionally, the possible reduction of state inmate beds would result in a loss of revenue for jails. Currently, 85 offenders in jail custody for violations of supervision could be eligible for a day reporting program as an alternative sentence.

Under the legislation, the day reporting program may require participants to be subject to electronic monitoring under the supervision of the county jailer or misdemeanor supervision departments (KRS 532.210).

Re-Entry Centers:

Re-Entry Centers may be operated by jails to provide re-entry services to offenders. Offenders can be placed in the Re-Entry Center by the Department, the Jailer, the Court, or the Parole Board. While there are additional operating costs for the jails, particularly with costs of providing additional programming related to vocational training, evidence based programs, employment, family outreach and community involvement programs. The program will require the jail to employ a program coordinator and review each offender's case with a certified drug and alcohol counselor. Participants can work while in the program, providing an opportunity to pay restitution and contribute to a saving program. Jails may charge the residents a percentage of their income to go towards costs.

The jails will have additional incurred costs by providing a facility for the re-entry center, which may include purchasing, building, or renovating existing property. In addition, the jail will have routine operating costs such as utilities, food service, and staff to provide security supervision for those living in the center. The jail will also have to provide staff to perform administrative services such as jail fees collected, restitution paid, and prisoner savings.

Re-Entry Centers may provide a cost savings to the county if utilized as a response to violations of supervision in lieu of revocation. The Re-Entry Center may also provide additional revenue for the jails by way of expanded capacity for state inmates. The legislation includes reporting requirements. The Department currently does not track any information regarding county jail offenders.

Work Release outside of Jail or Prison:

The legislation provides for Class C and Class D offenders serving their time at a local jail, with approval from the Commissioner of the Department of Corrections, to be approved for a community work program. The jailer may require the participating inmate to pay a fee or percentage of their earned wage, as well as pay for their drug testing as a requirement of the program. This legislation provides additional work opportunities for inmates. In addition to the job training it provides to the inmates, it also provides a needed service in the communities where these offenders are incarcerated. Inmates often serve on road crews, waste management, maintain park areas, and several other services which contribute to the betterment of Kentucky communities. Having inmates provide services reduces cost to the counties who would otherwise pay wages for these services.

While this legislation would allow prisoners additional opportunities to work and learn necessary skills, however, there is potential for county agencies and non-profit groups who currently utilize prisoner labor for free to lose their workforce due to prisoners choosing to participate in a program that pays them a normal wage in the private sector. If this happens, county agencies and non-profit groups would have to hire staff to perform these duties, which would be an additional cost for them. In addition, the number of prisoners eligible to participate in the Class D and Class C program continues to decline as these offenders are subject to early release or treatment opportunities. As such, counties and non-profit groups are sometimes encountering difficulty in getting prisoners to fill the current demand. By adding opportunities to participate in a work-release program, the labor pool is further diminished.

The following offices contributed to this Corrections Impact Statement:

☒ Dept. of Corrections ☐ Dept. of Kentucky State Police ☒ Administrative Office of the Courts ☒ Parole Board ☐ Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments.

APPROVED BY:

Commissioner, Kentucky Department of Corrections

Date